RECENT CASES.

ASSIGNMENTS FOR CREDITORS — MARSHALLING ASSETS — NOT PERMISSIBLE TO PREJUDICE SENIOR CREDITOR. — The defendant purchased of the plaintiff's assignor in bankruptcy a stock of merchandise, furniture, and fixtures, both parties acting in good faith. Under a statute the sale of the stock was void against creditors of the vendor. The defendant paid, and secured the assignment of a mortgage on the stock, the furniture, and the fixtures. The plaintiff sought a decree confining the defendant to the furniture and fixtures for satisfaction of the mortgage. *Held*, that the plaintiff is not entitled to such a decree. *Adams* v. *Young*, 86 N. E. 942 (Mass.).

Where a conveyance has been set aside for actual fraud against creditors of the grantor, a grantee has been allowed to hold the property under a mortgage paid by, or assigned to, himself. *King* v. *Wilcox*, 11 Paige (N. Y.) 589. *A fortiori* a grantee merely constructively fraudulent receives like protection. If he pays the claims of secured creditors, he may be subrogated to their rights. *Cole* v. *Malcolm*, 66 N. Y. 363. Or if, as in the principal case, he secures an assignment of a mortgage, this will not merge, but will be upheld against the property. *Fordyce* v. *Hicks*, 76 Ia. 41. As the present defendant has a valid mortgage covering the stock, he should not be prevented from enforcing it. The doctrine of marshalling assets will never be applied when to do so would prejudice the senior creditor. *Detroit Bank* v. *Truesdale*, 38 Mich. 430, 439; *Wolf* v. *Smith*, 36 Ia. 454. Nor is it generally applicable unless both the funds upon which the senior creditor has a lien are in the hands of the common debtor. *Dorr* v. *Shaw*, 4 Johns. Ch. (N. Y.) 17. But *cf. Hodges* v. *Hickey*, 67 Miss. 715, 728. The principal case is therefore unquestionably sound in refusing to compel the creditor to apply his own property to the debt.

BANKRUPTCY — JURISDICTION OF FEDERAL COURTS — EFFECT OF DISSOLUTION OF CORPORATION BY STATE DECREE. — A corporation voluntarily petitioned the state to accept the surrender of its charter. A state court granted this petition. Subsequently creditors of the corporation filed in the federal court a petition of involuntary bankruptcy against the corporation, stating that it was insolvent and had allowed certain preferences within four months. *Held*, that the federal court has jurisdiction. *In re Adams* v. *Hoyt*, 21 Am. B. Rep. 161 (Dist. Ct., N. D. Ga.).

Where an individual commits acts of bankruptcy and dies before a petition of involuntary bankruptcy is filed, the court will refuse jurisdiction, for it is given no jurisdiction over the estate of a deceased person. *Adams* v. *Terell*, 4 Fed. 796. The surrender of its franchise by a corporation is corporate death. 1 BL. COMM. 485. Logically, therefore, dissolution before a petition is filed should defeat the jurisdiction of bankruptcy courts. But where dissolution is merely incident to winding up the affairs of the corporation, its existence is extended for the purpose of satisfying the ends of justice. *Coal Co.* v. *Stauffer*, 148 Fed. 981. The decision considered follows a line of cases allowing a dissolved corporation to be adjudged bankrupt. *In re Munger*, 159 Fed. 901. The effect of corporate death, controlled by the corporation itself, is to deprive it of the power to set aside preferences, and dissolution in such circumstances is an act of bankruptcy. *Scheuer* v. *Book Co.*, 112 Fed. 407. If therefore dissolution were to deprive the bankruptcy court of jurisdiction, we should have a voluntary act of bankruptcy itself avoiding the effect of the bankruptcy act. The result reached here is thus clearly desirable.

BILLS AND NOTES — BANKS AND BANKING — DRAWEE'S LIABILITY TO DEPOSITOR FOR PAYMENT UPON FORGED INDORSEMENT. — The plaintiff drew a check upon Bank X and sent it to an agent with orders to give it to the payee, a creditor of the plaintiff. The agent forged the payee's name and

obtained payment on the check from Bank Y. He then deposited the money to his own credit in Bank Y. Later he drew out the money and paid it over to the plaintiff in satisfaction of a pre-existing debt to the plaintiff. The plaintiff now seeks to recover from Bank X the amount of the unauthorized payment. *Held*, that as the money belonged in conscience to Bank X, the agent could not discharge his debt with it; and that, as the agent's debt remains unpaid, and the proceeds of the original check have reached the plaintiff's hands again, the plaintiff has suffered no damage. *Andrews* v. *Northwestern National Bank*, 117 N. W. 621 (Minn.).

As Bank X, in the main case, reimbursed Bank Y for its payment to the agent, the agent in effect wrongfully obtained money from Bank X. Consequently he was a constructive trustee for Bank X of the claim against Bank Y acquired with the stolen money. *Newton* v. *Porter*, 5 Lans. (N. Y.) 416. When he realized upon this claim and paid over the proceeds to the plaintiff, the latter, by accepting the money in payment and discharge of a pre-existing debt from the agent to himself, became a purchaser for value. *Mechanics' Bank* v. *Chardavoyne*, 69 N. J. L. 256. And being also a purchaser without notice, the plaintiff acquired title to the money free of all equities. *Nassau Bank* v. *National Bank of Newburgh*, 159 N. Y. 456. See 19 HARV. L. REV. 55. In other words, the money paid to the plaintiff was not at all the property of Bank X, but the plaintiff's own property for which he had paid value. Therefore his loss through Bank X's payment on the forged indorsement was not cured by this payment from the agent; and he should have been allowed recovery to the full amount of the original check, under the rule making the drawee bank responsible to the depositor for payments upon forged indorsements. *Bank of British N. America* v. *Merchants' National Bank*, 91 N. Y. 106.

BILLS AND NOTES — CHECKS — DISHONOR OF CERTIFIED CHECK OBTAINED BY FRAUD. — A drew a check on the X bank payable to order of B. B had the check certified by X. Then B endorsed it to C in payment for a horse. C deposited the check properly endorsed in the Y bank. B discovered that C had obtained the check by fraud and notified Y of such fact. Y sued X on the check and, on an interpleader, B was substituted as defendant. *Held*, that Y may recover. *Blake* v. *Hamilton Dime Savings Bank Co.*, 87 N. E. 73 (Oh.)

By the certification of a check for the holder the drawer is discharged and the bank becomes debtor to the holder. *First Nat'l Bank* v. *Leach*, 52 N. Y. 350; *Willets* v. *Phœnix Bank*, 12 Duer (N. Y.) 121. It is as if a negotiable certificate of deposit had been issued. See *Metropolitan Nat'l Bank* v. *Jones*, 137 Ill. 634. Though a check so certified circulates as freely as money, it remains merely the representative of so much money in the bank. See *Merchants' Bank* v. *State Bank*, 10 Wall. (U. S.) 604, 647. Thus the acceptance of a certified check is not payment. *Mutual National Bank* v. *Rotgé*, 28 La. Ann. 933. In treating such checks as money the court apparently lost sight of this distinction. A purchaser for value without notice can collect such check, though it was stolen or obtained by fraud. *Nolan* v. *Bank of N. Y. Nat'l Banking Ass.*, 67 Barb. (N. Y.) 24; *Nassau Bank* v. *Broadway Bank*, 54 Barb. (N. Y.) 236. But it is submitted that against a holder without value or with notice these defenses should be valid. In the case of bank notes and certificates of deposit it has been so held. *Olmstead* v. *Winsted Bank*, 32 Conn. 278; *Dunn* v. *Bank*, 11 S. D. 305. In the United States the mere credit of a check to a depositor's account does not make the bank a purchaser for value. *Thompson* v. *Sioux Falls Nat'l Bank*, 150 U. S. 231. Therefore the main case seems a departure from true principle.

CONFLICT OF LAWS — MARRIAGE — VALIDITY OF FOREIGN MARRIAGE. — A Hindu, domiciled in India, where his personal relations were governed by the Hindu law, married in England a Christian woman there domiciled. The Hindu law forbade marriage outside of caste and religion, and allowed polygamy. *Held*, that the marriage is valid. *Venugopal Chetti* v. *Venugopal Chetti*, 25 T. L. R. 146 (Eng., Prob. Div., Dec. 7, 1908). See NOTES, p. 439.